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12 *Attorneys for James Terry Henrikson*

13 UNITED STATES DISTRICT COURT
14 EASTERN DISTRICT OF WASHINGTON

15 UNITED STATES OF AMERICA,)
16) **NO. 14-00124-SJM-1**
17 Plaintiff,)
18 vs.) Motion to Compel Production of
19) Unredacted Discovery, or in the
20 JAMES TERRY HENRIKSON,) Alternative, Request for Privilege
21) Log and for an *In Camera* Review
22 Defendant.)
23) **04/28/15 @ 2:00 p.m. (Spokane)**

24 **MOTION**

25 James Terry Henrikson, by and through counsel, Mark E. Vovos and Todd
Maybrown, moves this Court for an order requiring the plaintiff to disclose
information and material pursuant to *Brady v. Maryland*, 373 U.S. 83 (1963) and

MOTION TO COMPEL PRODUCTION
OF REDACTED DOCUMENTS - 1.

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1 Fed. R. Crim. P. 16(a)(1)(G). In the alterative, Mr. Henrikson requests the plaintiff
2 to produce a privilege log and this Court conduct an *in camera* review of the
3 withheld redacted documents. The motion is based upon the declaration of counsel
4 in support thereof and the memorandum cited herein.

5 MEMORANDUM

6 **Facts**

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8 Defendants have been provided a total of nine discovery disclosures.¹ The
9 first disclosure was received on or about October 7, 2014. This disclosure is
10 comprised of 39 individual discs which contain a variety of statements, photos, and
11 videos. Discovery disclosure two was on or about October 30, 2014. This
12 disclosure is comprised of roughly 42 discs and contains search warrants, phone
13 calls, interviews, business documents, photos, cell phone content information, and
14 cell phone reports. Discovery disclosure three was received on or about November
15 14, 2014. This disclosure contains 21 discs and is comprised of pictures,
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20 ¹ The discovery as of February 26, 2015 contains a total of 112 discs which equates
21 to roughly 269 gigabytes of data. A good portion of the discovery is comprised of
22 recorded interviews of witness statements without transcription.
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1 interviews, cell phone content information, phone calls, medical records, and
2 missing person information. Discovery disclosure four was received on or about
3 November 26, 2014. It is comprised of one disk with over 25,000 pages of various
4 documents in no organized manner. The documents included arrest warrants,
5 reports, driver license information, bank statements, receipts, copies of checks,
6 emails, business documents, financial records, emails, crime lab reports, various
7 warrants, and criminal history records. Discovery disclosure five was received on
8 or about December 3, 2014. That disclosure is comprised of one disc which
9 contained the transcript of the Grand Jury proceeding held in the Eastern District of
10 Washington on July 22, 2014. Discovery disclosure six was received on or about
11 February 5, 2015. That disclosure is comprised of five discs which contained
12 records checks, HSI Reports of Investigation, letters, and receipts of evidence.
13 Discovery disclosure seven was received on or about February 5, 2015. That
14 disclosure contains one disc with additional HSI Report of Investigation.
15 Discovery disclosure eight was received on or about February 10, 2015. That
16 disclosure contains one disk and comprises of 36 pages of various documents.
17 These documents include plea agreements and judgments in other defendants'
18 previous cases. Discovery disclosure nine was received on or about February 26,
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1 2015. It is comprised of one disc which contains 243 pages of various documents.
2 These documents include letters from the United States Attorney's Office,
3 affidavits, warrants, investigative reports, subpoenas, notes and emails.

4 **Legal Authority**

5 The due process clauses of the Fifth and Fourteenth Amendments require
6 that the prosecution in a criminal case disclose to the defense any evidence in the
7 government's possession that is favorable to the accused and that is material to
8 either guilt or punishment. *Brady v. Maryland*, 373 U.S. 83, 87, 83 S.Ct. 1194
9 (1963). Suppression of such evidence by the government works a constitutional
10 violation, regardless of the good faith or bad faith of the prosecutor. *Id.* "[A]n
11 inadvertent nondisclosure has the same impact on the fairness of the proceedings
12 as deliberate concealment." *Strickler v. Greene*, 527 U.S. 263, 288, 119 S.Ct. 1936
13 (1999). The constitutional obligations under Brady are self-executing, and they do
14 not require a motion by the defense or an order of the court to take effect. *Kyles v.*
15 *Whitley*, 514 U.S. 419, 433, 115 S.Ct. 1555 (1995) (citing *United States v. Agurs*,
16 427 U.S. 97, 108, 96 S.Ct. 2392 (1976)). *Brady* material must be disclosed
17 sufficiently in advance of trial as to be of value to the accused. *United States v.*
18 *Aichele*, 941 F.2d 761, 764 (9th Cir. 1991).

1 Federal Rule of Criminal Procedure 16(a)(1)(B) provides in relevant part:

2 Upon a defendant's written requests, the government must disclose to
3 the defendant and make available for inspection, copying, or
4 photographing, all of the following:

5 (ii) the portion of any written record containing the substance of any
6 relevant oral statement made before or after arrest if the defendant
7 made the statement in response to interrogation by a person the
8 defendant knew was a government agent.

9 The Ninth Circuit has previously held that the government's disclosure
10 obligation under Rule 16(a)(1)(B)(ii) extends to rough interview notes of
11 interviews with the Defendants. *United States v. Harris*, 543 F.2d 1247 (9th Cir.
12 1976); *see also United States v. Grace*, 435 F.Supp.2d 861, 864 (D. Mont. 2006).
13 In *United States v. Lewis*, 511 F.2d 798, 802 (D.C. Cir. 1975), the court noted that
14 the discovery of a defendant's statements to law enforcement agents is of the
15 utmost importance in the preparation of a criminal defense.

16 **Argument**

17 Counsel has previously been provided with redacted discovery pertaining to
18 police reports and statements in this case related to investigations as to the scope of
19 each co-defendant's participation in the alleged crimes. Specifically, bates
20 numbered documents: 00100002, 00100454, 00100463-00100542, 00100544-
21 00100620, 00100782-00100784, 00100791, 00114017-00114018, 00114034-
22

1 00114035, 00114171-00114183, 00114187-00114188, 00114224-00114225,
2 00114347-00114348, 00115822-00115823, 00117644-00117647, 00117851-
3 00117852, 00118353-00118357, 00123723-00123724, were all provided in
4 discovery disclosure four. **Exhibit A.** Some of these documents were redacted to
5 the extent that it was unrecognizable. Additionally, counsel was also provided with
6 photographs and 3D renditions of 2505 S. Garfield. This disclosure has pictures
7 that are completely unidentifiable. Due to the size and type of information on
8 Exhibit B, a CD will be provided with the information sought to be unredacted. By
9 way of example, three (3) pictures are provided, attached as Exhibit B to this
10 motion. **Exhibit B.**

13 It is counsel's position that the redacted documents may have exculpatory
14 information relating the state of mind and degree of participation as to each
15 defendant in the alleged crimes in this indictment. At minimum, the documents
16 that were redacted and provided to the defendants in discovery raise factual issues
17 about the involvement and knowledge as to each defendant. Without a privilege
18 log, Mr. Henrikson is unable to fully contextualize the discovery provided and
19 therefore unable to utilize the evidence and prepare a defense.
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CONCLUSION

Defendant James Terry Henrikson respectfully requests that this Court order the plaintiff to produce the unredacted copy of the following to defense counsel:

A. Discovery Disclosure 1, provided to defendants on or about October 7, 2014. This disclosure contains 39 discs. One of the discs entitled "3D Crime Scene Scan 2505 S. Garfield" contains pictures and documents that appear to be redacted. There are a total of 507 documents. Some of these documents are photographs, word documents, and un-openable or accessible files which appear to be redacted.

B. Discovery Disclosure 4, provided to defendants on or about November 26, 2014. Bates number 00100002, 00100454, 00100463-00100542, 00100544-00100620, 00100782-00100784, 00100791, 00114017-00114018, 00114034-00114035, 00114171-00114183, 00114187-00114188, 00114224-00114225, 00114347-00114348, 00115822-00115823, 00117644-00117647, 00117851-00117852, 00118353-00118357, 00123723-00123724 appear to be redacted.

In the alternative, order the plaintiff to produce a privilege log and this Court conduct an *in camera* review to determine if the withheld documents are improperly withheld and should be disclosed to the defendants.

1 RESPECTFULLY SUBMITTED this 14th day of April, 2015.

2
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10 CERTIFICATE OF SERVICE

11 I hereby certify that on April 14, 2015, I electronically filed the foregoing
12 with the Clerk of the Court using the CM/ECF System which will send notification
13 of such filing to: Aine Ahmed, Assistant United States Attorney

14 *s/ Mark E. Vovos, #4474*
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